

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ERIC A. KLEIN,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

09 Civ. 10048 (PAC)

OPINION AND ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

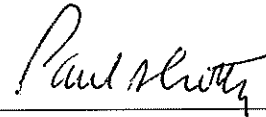
Petitioner Eric A. Klein (“Klein”), *pro se*, moves for relief from his conviction. On July 8, 2005, a jury convicted Klein of wire fraud and conspiring to commit wire fraud. Klein was sentenced to a term of 51 months imprisonment and three years supervised release, and ordered to pay \$819,779 in restitution. Since his sentencing, Klein has filed numerous meritless appeals and dozens of baseless motions relating to his 2005 criminal conviction. The Court presumes familiarity with the facts as set forth in the October 17, 2012 Memorandum and Order, which denied Klein’s 28 U.S.C. § 2255 petition, *see Klein v. United States*, No. 09 cv. 10048, 2012 WL 5177493 (S.D.N.Y. Oct. 2012), and the November 8, 2013 Memorandum and Order, which denied Klein’s Rule 60(b) motion for reconsideration of that denial, *see Klein v. United States*, No. 09 cv. 10048, 2013 WL 5966889 (S.D.N.Y. Nov. 8, 2013).

Currently before this Court is Klein’s most recent attempt to relitigate his conviction, which he styles as a motion for an “order to show cause” rather than as a second or successive § 2255 petition. Dkt. No. 113. No Federal Rule of Civil Procedure authorizes such a motion in these circumstances. Rather, because Klein’s motion challenges his conviction as being

“imposed in violation of the Constitution or laws of the United States,” the Court hereby construes it as a second or successive § 2255 petition and TRANSFERS it to the United States Court of Appeals for the Second Circuit for performance of its gatekeeping function. *See* 28 U.S.C. § 2255(a); *Whab v. United States*, 408 F.3d 116, 118 (2d Cir. 2005) (“[A] ‘second or successive’ petition for relief under § 2255 may not be filed in a district court, unless the petitioner first obtains the authorization of the court of appeals, certifying that the petition conforms to specified statutory requirements.”); *Jiminian v. Nash*, 245 F.3d 144, 148 (2d Cir. 2001) ([W]hen presented with a [post-conviction motion] raising previously available claims appropriately the subject of a § 2255 motion, district courts should construe the petition as a second or successive § 2255 motion and transfer it to this Court for certification, so long as the prisoner had a prior § 2255 motion dismissed on the merits.”).

Dated: New York, New York
November 21, 2017

SO ORDERED



PAUL A. CROTTY
United States District Judge

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